# STATE OF MICHIGAN

# COURT OF APPEALS

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BRIAN PERRY,

Plaintiff-Appellant,

V

GOLLING CHRYSLER PLYMOUTH JEEP, INC.,

Defendant-Appellee.

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UNPUBLISHED
October 11, 2005

No. 254121
Oakland Circuit Court
LC No. 03-005489-NI

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order that granted summary disposition to defendant and dismissed this automobile liability case. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleges liability on the part of defendant, a car dealer, as owner of a vehicle that was involved in an accident. The buyer, Ksenia Nichols, was driving the car when an accident occurred. Plaintiff suffered a closed head injury and irreversible brain damage.

Defendant moved for summary disposition under MCR 2.116(C)(10) and argued that it was not liable for plaintiff's injuries because it did not have any ownership interest in the car. Defendant also argued that plaintiff had waived any rights to recovery from defendant by releasing Nichols from liability in a prior lawsuit.

The trial court ruled in defendant's favor and found that Nichols, not defendant, was the owner of the car at the time of the accident. The court further ruled "that the release of the driver has no bearing on the liability of the owner under the owner[']s liability statute."

This Court reviews de novo the trial court's ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Under MCR 2.116(C)(10), the court considers the pleadings, affidavits, depositions, and any other documentary evidence, in a light most favorable to the party opposing the motion. *Maiden, supra* at 120. Further, we must "evaluate [such] a motion for summary disposition . . . by considering the substantively admissible evidence actually proffered in opposition to the motion." *Id* at 121. We "may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial" because a "mere promise is insufficient under our court rules." *Id*.

The owner's liability act, MCL 257.401, states in pertinent part:

> The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge.

But MCL 257.401 is qualified by MCL 257.240, which states:

> The owner of a motor vehicle who has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee shall not be liable for any damages or a violation of law thereafter resulting from the use or ownership of the vehicle by another.

Furthermore, MCL 257.233(9) states:

> Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the assignment of the certificate of title.

The purpose of this statute is to place the risk of damage or injury on both the person who has the ultimate and the immediate control of the motor vehicle. *DeHart v Joe Lunghamer Chevrolet, Inc*, 239 Mich App 181, 185; 607 NW2d 417 (2000). The Motor Vehicle Code also defines "owner" to include "a person who holds legal title to the vehicle" or "[a] person who has the immediate right of possession of a vehicle under an installment sale contract." MCL 257.37.

At issue here is when did ownership of the car change hands? The application for title, statement of vehicle sale, odometer disclosure statement, and sales agreement were dated October 19, 2000. Defendant also issued a temporary registration on that date. Nichols signed financing documents on October 20, 2000, about six hours before the accident.

But, defendant did not *assign* the title to Nichols until October 23, 2000. The Secretary of State issued a title in Nichols name on October 31, 2000. The title indicates the finance company filed its security interest on October 30, 2000.

Plaintiff relies on MCL 257.233(9), which lays out the requirements for transfer of title, to support his claim that ownership was not transferred until sometime after the accident. That section of the Motor Vehicle Code provides there must first be a delivery of the car to the new owner. Here, there is no dispute that the car was turned over to Nichols on October 19, 2000, a day before the accident. The second requirement for the transfer of interest can be met by completing one of two alternatives — either execution of the application for title *or* assignment of the certificate of title.

MCL 257.217(4) requires a dealer to apply to the Secretary of State for a new title and transfer or secure registration in the name of the buyer within fifteen days. The buyer must sign

the appropriate paperwork to allow the dealer to comply with the statute. *Id*.; *Goins v Greenfield Jeep Eagle*, 449 Mich 1, 5; 534 NW2d 467 (1995). It is the transfer of title that signifies transfer of vehicle ownership. "'In other words, dealer compliance with the registration provisions of the Vehicle Code is not a sine qua non for transfer of ownership.'" *Id.* at 12, quoting *Zechlin v Bridges Motor Sales*, 190 Mich App 339, 342; 475 NW2d 60 (1991). In *Goins*, an accident occurred three days after the Secretary of State issued a certificate of title in the buyer's name. The car dealer followed the statute: it executed the application for title and signed the certificate of title to the buyer. The Court concluded because title transfers when there has been an "execution of either the application for title or the certificate of title," the title to the vehicle in that case was transferred, and the defendant no longer remained liable as the owner of the vehicle. *Goins, supra* at 14. Further, the Court stated that the application for title was executed when the defendant sent the necessary forms to the Secretary of State. *Id.*

In the instant case, Nichols signed the application for title, and defendant apparently sent the application to the Secretary of State as the Secretary of State issued a title in Nichols' name. Clearly, defendant followed the statutory requirement to apply within fifteen days. Nor is there any dispute that defendant assigned the certificate of title to Nichols on October 23, 2000, three days after the accident. But the documents the trial court considered and presented to this Court also leave no doubt that Nichols signed the application for title before the accident on October 20, 2000. Further, it is undisputed that the Secretary of State issued a certificate of title in Nichols' name on October 31, 2000.

The statute requires the "execution of either the application for title or the assignment of the certificate of title" to effectuate the "transfer of title or interest." MCL 257.233(9). Here, the earliest date of transfer of title by means of the assignment of the certificate of title would be October 23, 2000. But the record in this case does not indicate when defendant sent the necessary forms to the Secretary of State and, therefore, executed the application for title. Because a genuine issue of material fact exists, the trial court erred in granting summary disposition. *Auto Club Ins Ass'n v Sarate*, 236 Mich App 432, 437; 600 NW2d 695 (1999).

The second argument defendant raises concerns a release plaintiff signed as to Nichols. Defendant frames this argument as one in which its liability is derivative of that of the driver. But, if defendant is the owner of the car, then the owner's liability act, MCL 257.401, makes defendant liable for any negligent operation of the vehicle when it is being driven with the owner's express or implied consent or knowledge. In *Moore v Palmer*, 350 Mich 363, 394; 86 NW2d 585 (1957), our Supreme Court spoke to the liability of an owner when another person is operating the vehicle:

> Its [the owner's liability act] obvious purpose is to make owners of automobiles liable for the negligent acts of those to whom they entrust their vehicles. Liability under the statue is not limited by the common-law tests applicable to the master-servant relationship. The fact that a common-law action under the master-servant doctrine preceded the statute (and still exists) does not create any exception from the terms of the statute in favor of employers as a class.
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> The statute carries within it its own test as to owner liability: Whether "said motor vehicle is being driven with his or her express or implied consent or knowledge."

Subsequent cases have followed the rule that an injured person need only show that the defendant was the owner of the vehicle being operated and that the vehicle was being driven with the owner's knowledge or consent. *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998). The owner's liability is nonderivative under the statute. *Id.*; *Wilson v Al-Huribi*, 55 Mich App 95, 98; 222 NW2d 49 (1974). The trial court correctly ruled on this issue.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey